whether the error is in the admission or rejection of evidence,[8] or in the misconduct of the prosecuting attorney,[9] or of the trial judge.[10]

After all it would seem that the only change resulting from section 4½ is in permitting the appellate courts to review the evidence. It is claimed that the section has done away with the presumption of injury from error.[11] It is true that there were early cases supporting such a presumption,[12] but a proper interpretation of certain parts of the Penal Code[13] led the later cases to demand a showing of injury to a substantial right, so far as this was possible without a review of the record.[14] In civil cases too, under section 475 of the Code of Civil Procedure a showing of substantial injury was necessary.[15] But without the evidence before it the reviewing court could not properly estimate the effect of the error. Under section 4½ a review of the evidence is now required. Therefore those desiring a reversal in criminal cases, and it would seem, also in civil cases, must include the whole record on appeal. Otherwise the court could not say that the part of the record not taken up on appeal would not show the error to be harmless.

In those cases where the court could say that the error did not influence the verdict of the jury section 4½ has and will prevent reversals. But where there is a conflict of evidence and the court cannot say that in the absence of error the jury might not have reached a different result, there will be a reversal in spite of section 4½. A thorough-going restatement of our criminal law and procedure is required, covering the organization of courts, the classification of offenses and offenders, the rules of evidence, the relation of the judge to the jury, and the system of instructions. Adequate institutions for the treatment of offenders are also a necessity.

J. G.

ESTATES OF DECEASED PERSONS: PRESENTATION OF CLAIMS: WHETHER AMENDMENTS ALLOWABLE.—The complaint in an action against an estate, and the claim which was presented and rejected, alleged the failure of the decedent to deliver to plaintiff a certain

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[8] People v. MacPhee (1914), 26 Cal. App. 218, 226, 146 Pac. 522; People v. Converse, supra, n. 6.

[9] People v. Keko (1915), 27 Cal. App. 351, 353, 149 Pac. 1003.

[10] People v. Pitisci (1916), 29 Cal. App. 727, 157 Pac. 502.

[11] People v. Merritt (1912), 18 Cal. App. 58, 122 Pac. 839; People v. O'Bryan, supra, n. 4.

[12] People v. Murphy (1873), 47 Cal. 103; People v. Furtado (1881), 57 Cal. 345; People v. Richards (1902), 136 Cal. 127, 68 Pac. 477.

[13] §§ 960, 1258, 1404.

[14] People v. Brotherton (1874), 47 Cal. 388, 404; People v. Kamaunu (1895), 110 Cal. 609, 612, 42 Pac. 1090; People v. Glaze (1903), 139 Cal. 154, 162, 72 Pac. 965; People v. Creeks (1904), 141 Cal. 527, 533, 75 Pac. 101.

[15] 2 Hayne, New Trial and Appeal, p. 1592, and cases cited.

number of fruit trees, under a contract therein set forth. On appeal, the contract was interpreted to call for delivery from a specified lot only, and the complaint was held defective in failing to aver that the defendant had the requisite number on hand, or through negligence had failed to keep them on hand. Plaintiff then filed an amended complaint containing the required allegations, but it was held defective, in *Pearson v. Parsons*,[1] as stating a cause of action not included within the claim presented. The time for filing claims having long since expired, and amendment of the claim not being permissible, the plaintiff is wholly without a remedy.

The decision is entirely in harmony with preceding California cases,[2] yet there is obviously a hardship in forever barring a man's cause of action because he has misinterpreted the terms of an involved contract in filing his claim. Three possible remedies present themselves, one available under the law as it now stands, and the others requiring legislative action.

Without doing violence to any statutory provisions, the courts could be much more liberal in allowing variance between the claim and the complaint, in purely technical respects. Immaterial variances are at present overlooked to a greater degree than they would be in a complaint.[3] But a claim is not a pleading. It is merely a means of notifying the administrator of the existence of the demand against the estate. The services of a lawyer should not be necessary in the giving of such a notice. When the claim is rejected, action is brought upon the original demand, not upon the claim itself,[4] and recovery on substantially the same demand of which notice was given should not be barred for the reason that, technically, it is a different cause of action.[5]

The hardship might also be obviated by allowing amendments to claims even after the time for presentation has elapsed. It is well settled that this cannot be done under present California law.[6] The general provisions for amendments would seem in themselves broad enough to cover the case,[7] but they are apparently deemed restricted by the sections which "bar forever" all claims not pre-

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[1] (Sept. 13, 1916), 52 Cal. Dec. 303, 159 Pac. 1173.

[2] Barthe v. Rogers (1899), 127 Cal. 52, 59 Pac. 310; Etchas v. Orena (1900), 127 Cal. 588, 60 Pac. 45; Morehouse v. Morehouse (1903), 140 Cal. 88, 73 Pac. 738; Bechtel v. Chase (1909), 156 Cal. 707, 106 Pac. 81.

[3] Pollitz v. Wickersham (1907), 150 Cal. 238, 88 Pac. 911; Western States Life Ins. Co. v. Lockwood (1913), 166 Cal. 185, 135 Pac. 496.

[4] Gallagher v. McGraw (1901), 132 Cal. 601, 64 Pac. 1080.

[5] Carter v. Pierce (1904), 114 Ill. App. 589; Taber v. Zehner (1911), 47 Ind. App. 165, 93 N. E. 1035.

[6] Estate of Sullenberger (1887), 72 Cal. 549, 14 Pac. 513; In re Turner's Estate (1900), 128 Cal. 388, 60 Pac. 967.

[7] Cal. Code Civ. Proc., §§ 469, 470, 473. See Belleville Sav. Bank v. Bornman (Ill., 1886, 1887), 7 N. E. 686, 10 N. E. 552, for construction of a liberal general amendment statute.

sented within the required period after notice.[8] A code provision expressly authorizing such amendments may be advisable, with proper limitations.

A still more liberal remedy, which would relieve other and different cases of hardship, as well as the one under discussion, would be a provision allowing entirely new, as well as amended claims to be filed at any time before the decree of distribution, at the discretion of the court, upon a showing of fraud, accident, mistake, or other equitable circumstances excusing the failure to present within the statutory period. The code now allows such late filing in the case of a claimant who had no notice by reason of being out of the state,[9] and that exception might well be extended to other cases equally deserving.

The code amendments suggested are in operation in a number of other states,[10] and although they exist in connection with probate systems differing more or less widely from the California system, it would seem that either could in substance be applied to the latter without serious inconvenience.

O. C. P.

MUNICIPAL CORPORATIONS: MUNICIPAL AFFAIRS.—"Most of the larger cities in the United States are at the present time not only organizations for the satisfaction of local needs, but also agents of the central government of the State, and are entrusted with the exercise of powers affecting not only the inhabitants of the local districts of which they have jurisdiction, but also the inhabitants of the whole state."[1] Legislatures have not distinguished so clearly as they should have done between these two functions, and have often forgotten that municipal corporations have a sphere of local action in which they should move freely and, in a large degree, uncontrolled. Thus, prior to 1896, the California legislature did not scruple to exercise control over all municipal actions, local as well as general.[2] The home-rule regime of municipal government was definitely established in California by the constitutional amendment of 1896.[3] While the amendment served

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[8] Cal. Code Civ. Proc., §§ 1493, 1498, 1500, 1502.

[9] Cal. Code Civ. Proc., § 1493.

[10] Provisions allowing amendments: Appeal of Merwin (1899), 72 Conn. 167, 43 Atl. 1055; Chariton Nat. Bank. v. Whicher (1914), 163 Iowa, 571, 145 N. W. 299.

Provisions allowing late presentation under special circumstances: Brewster v. Kendrick (1864), 17 Iowa 479; Massachusetts Mut. L. Ins. Co. v. Elliot (1877), 24 Minn. 134; Cutting v. Ellis (1894), 67 Vt. 70, 30 Atl. 688.

[1] Goodnow, Municipal Home Rule, 18.

[2] Thomason v. Ashworth (1887), 73 Cal. 73, 14 Pac. 615; People v. Henshaw (1888), 76 Cal. 436, 18 Pac. 413; Davies v. City of Los Angeles (1890), 86 Cal. 37, 24 Pac. 771.

[3] Cal. Const, Art. XI, § 6.